

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

**vs.**

**DAVID WAYNE MOORE**

**Defendant.**

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)  
)

**Criminal Action No. 10-00112-KD-C**

**ORDER**

This matter is before the Court on the Government’s appeal of the preliminary order of release pending the detention hearing (Doc. 5). As grounds for appeal, the Government contends that because the underlying charge invokes the presumption of detention it was error to release the Defendant pending the detention hearing. See 18 U.S.C. § 3142(f)(2)(B) (“During a continuance, such person shall be detained . . . .”). However, the Government neglects to inform the Court that assuming error was committed, it was invited by the Government. The undersigned has reviewed the recording of the proceeding in which the Government clearly states that this case is “not a presumption case.” Thereafter, U.S. Magistrate Judge Cassady announced his intent to release the Defendant pending the detention hearing based, *inter alia*, on the fact that this was not a “presumption case.” No objection was interposed on the record as to the Defendant’s temporary release.<sup>1</sup>

Judge Cassady has not had the opportunity to consider the issues which have been raised on appeal. Accordingly, it is **ORDERED** that the Government’s appeal (Doc. 5) is hereby **REFERRED** to Magistrate Judge Cassady. Moreover, the Clerk of Court is **DIRECTED** to docket

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<sup>1</sup> The Government states that an objection was made to the lack of electronic monitoring at some later time off the record.

the Government's appeal (Doc. 5) as a motion for reconsideration.

Further, the Government's request for a stay is also **REFERRED** to Judge Cassady pursuant to Local Rule 72.3(f) which provides: "The filing of a statement of appeal does not act as an order staying operation of the magistrate judge's order pending appeal. Any motion for a stay pending appeal shall be filed and promptly delivered in the first instance to the magistrate judge whose order is appealed; if the magistrate judge denies the motion for a stay, the motion may be addressed to the assigned district judge."

**DONE** and **ORDERED** this the **15<sup>th</sup>** day of **June 2010**.

/s/ Kristi K. DuBose

**KRISTI K. DUBOSE**

**UNITED STATES DISTRICT JUDGE**